

## Appendices

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## **Appendix 1      Framework for the DC SPD**

### **Introduction**

#### **1.      What is an SPD and what are its functions?**

- 1.1      The Developer Contributions Supplementary Planning Document (referred to as “the DCSPD” or “this SPD” or “the SPD”) is a statutory Local Development Document (LDD) and as such is one of the portfolio of documents that will make up the Selby District Local Development Framework (LDF). The SPD will not form part of the development plan, including for the purposes of Section 38(6) of the Town Planning and Compulsory Act 2004. However, it is an important material consideration in determining the planning applications to which it is relevant.
- 1.2      Because the LDF policies, which, when approved will underpin the seeking of developer contributions, are not in place, it is necessary for this SPD to be based on the current development plan documents. These are the ‘saved’ Selby District Local Plan (SDLP), the ‘saved’ Structure Plan and the approved and emerging Regional Spatial Strategy (RSS). The SPD also takes account of up-to-date planning policy, in particular, new national Planning Policy Statements (PPSs).
- 1.3      In the Local Development Scheme (LDS) profile for the SPD (Appendix 2 of the LDS April 2005) the function of the SPD is described as to: “... identify the Council’s requirements for mitigating the impacts of new development and delivering sustainable development through planning obligations.” Consistent with this function, the primary purpose served by preparing, adopting and publishing this SPD is to amplify those policies of the SDLP, as supplemented or superseded by the RSS and national PPSs, relevant to securing contributions in money or in kind from developers in connection with proposals for new development. These contributions will normally be sought through negotiation between the Council (as Local Planning Authority) (LPA) and developers, but often involving other parties, prior to or during the consideration of planning applications for new development. The contributions will almost always be secured through conditions attached to planning permissions or through Section 106 planning obligations.

### **Context**

#### **2.      The legal and policy basis and the function of the SPD**

- 2.1      The Legal or Statutory basis for preparing and adopting the Local Development Framework is the Planning and Compulsory Purchase Act 2004 (“the PCP Act 2004”) and the Town and Country Planning (Local Development) (England) Regulations 2004 (“the LD Regulations”).

- 2.2 The main Government policy statement and guidance on LDFs is Planning Policy Statement PPS12: Local Development Frameworks. A number of other policy documents have been issued by the Government to give detailed guidance on procedure and best practice in implementing the new LDF system. In addition there are many other Government policy guidance notes, advice notes and other documents, for example ODPM 'Circular 05/2005: Planning Obligations' and 'Planning-gain: a consultation', that are relevant to the matters to be covered in this SPD. (Many of these documents are referred to elsewhere in this SPD and more particularly in the SA; a comprehensive list is set out in Appendix 2 attached to the SA).
- 2.3 SPDs can cover a range of issues both thematic and site specific, but cannot be used to allocate land. SPDs must comply with the following principles (see PPS12, paragraph 2.43):
- i) The SPD must be consistent with the development plan and national and regional policies;
  - ii) The SPD must be clearly cross-referenced to the relevant Development Plan Document which it supplements (or, before a relevant DPD has been adopted, a saved policy);
  - iii) The SPD must be reviewed regularly alongside relevant DPD policies;
  - iv) The process 'by which the SPD has been prepared' must be made clear and a statement of conformity with the Statement of Community Involvement must be published with it; alternatively (as stated in paragraph 3.1 of PPS12) it must comply with the minimum requirements for community involvement set out in Regulation 17 of the LD Regulations.
- 2.4 In addition to the four requirements set out above, an SPD must be subject to a 'Sustainability Appraisal'. An SA is a systematic and iterative process by means of which, the social, economic and environmental effects of the proposals put forward in the SPD, are appraised from the outset of the preparation process. In Appendix 2, attached to this SPD, details of the SA process are set out, in terms of considering the sustainability of the SPD proposals, monitoring their likely impacts on the physical, economic and social environment and the use of SA in the review and revision of the SPD. The SA Report is published separately.
- 2.5 There is no requirement to prepare options in an SPD.
- 2.6 This SPD will serve the purpose of amplifying and helping in the successful implementation of policies in the development plan, it is a 'thematic' SPD, covering the subject areas and issues arising out of the policies it is intended to amplify. The primary source for the proposals set out in the SPD is the 'saved' Selby District Local Plan (SDLP).

2.1 Policy CS6 of the SDLP states as follows:

**“The District Council will expect developers to provide for or contribute to the provision of infrastructure and community facility needs that are directly related to a development, and to ensure that measures are incorporated to mitigate or minimise the consequences of that development.**

**Normally, these requirements will be imposed through conditions attached to the grant of planning permission.**

**Where this is not appropriate, the District Council will seek to negotiate planning obligations with developers to secure direct provision and/or financial contribution towards the provision of facilities or works:**

- 1) That are fairly and reasonably related in scale and kind to the proposed development; and**
- 2) Which are necessary to remedy any shortfalls or adverse impacts resulting from the proposed development; and**
- 3) Are necessary to make the proposal acceptable in land use planning terms.”**

2.2 In addition to Policy CS6 the SDLP contains policies that, in effect, will require developers to make contributions through actual provision of and/or financial arrangements for providing physical and social infrastructure and community facilities, in order to mitigate the consequences of the development they propose, if it were to be permitted and carried out.

2.3 These policies include Policy ENV1 (Control of Development), Policy ENV2 (Environmental Pollution and Contaminated Land), Policy ENV5 (Development in Flood Risk Areas), Policy H4 (Affordable Housing) Policy H11 (Rural Affordable Housing) and Policy RT2 (Open Space Requirements for New Residential Development).

2.4 Of these, the last three named contain specific requirements for defined subject areas and criteria that this SPD will reflect (subject to more recent national and local policy changes).

2.5 Policy ENV1 contains the general requirement that “Proposals ... will be permitted provided a good quality of development would be achieved. ...” and a comprehensive set of development criteria relating to specific aspects of the nature and quality of development, to be taken into account in determining all planning applications for new development; it should be noted that matters not specified in the policy but that could be material to providing a good quality of development is covered in part 8) of the Policy. The policy plainly takes a form, such that it constitutes,

through the requirement for ‘a good quality of development’, a general but clear basis for requiring the mitigation of the effects of development on the environment and the community. This mitigation may require the provision of new or improved infrastructure and/or community facilities and protection and, in some instances the enhancement of the environment affected by the proposals, these requirements may have to be met through developer contributions.

- 2.6 Similarly in order to satisfy Policies ENV2 and ENV5, requirements arising directly out of new development, over and above normal infrastructure requirements, may lead to developer contributions being sought, for example off-site works to control surface water run-off and mitigate the risk of flooding.
- 2.7 Whilst this guidance deals with specified aspects of seeking developer contributions, this will not preclude the Council seeking provision and contributions that may reasonably be required, in order for a development to accord with other policies of the SDLP, such as those relating to archaeological remains (ENV28) and strategic landscaping (ENV20), or to accord with policies and guidance in other development plan documents.
- 2.8 The policies in the SDLP, though they are the primary source for the proposals in this SPD and provide the basic underpinning and justification for the carrying the SPD proposals into effect, cannot be considered in isolation in this respect. Other plans and policies provide support for the framework of SDLP policies and proposals, or, in circumstances where SDLP policies are out of date, may supersede them. Key documents in this regard are the adopted and emerging RSS and national planning policy guidance. These other plans and policies can also provide additional justification for the nature, form and scope of some of the detailed guidance in this SPD.
- 2.9 For example, in the approved Regional Spatial Strategy (RSS) (December 2004) relevant Policies include:
- S1 (Applying the Sustainable Development Principles)
  - S3 (Urban and Rural Renaissance)
  - S4 (Urban and Rural Design)
  - E1 (Town and City Centres)
  - E2 (Rural employment opportunities)
  - T3 (Personal Transport)
  - H4 (Housing Size, Type and Affordability)
  - T7 (Transport in rural areas and market ...towns)
  - SOC1 (Health)
  - SOC2 (Education)
  - SOC4 (Open Space, Sport and Recreation)
  - N2 (Historic and Cultural Resources)
  - R3 (Water Resources and Drainage)

- R5 (Waste Management ...)

2.10 In the emerging RSS (December 2005), relevant policies include:

- YH1 (Overall Approach)
- YH2 (Climate Change and resource use)
- YH6 (Better Towns)
- YH7 (Vibrant rural ... areas)
- H3 (The provision of Affordable Housing)
- TH3 (Key Spatial Priorities)
- E1 (Creating a successful and competitive regional economy)
- ENV11 (Health and Recreation)
- ENV14 (...Waste Management Facilities)
- T2 (Parking Policies)
- T9 (Transport investment and management priorities).

2.11 Many policies, plans and programmes, other than those specifically mentioned in this text, have influenced the preparation of the SPD and its contents. These are referred to in some detail in sections 2 and 3 of the Sustainability Appraisal (SA). A comprehensive list of documents is set out in Appendix 2 attached to the SA.

## Implementation

### 3. The function and form of the SPD

- 3.1 The primary function of the DCSPD is to amplify those policies in the Selby District Local Plan (Adopted in February 2005), which constitute a basis for seeking the contributions (in money or in kind) developers and/or landowners can be expected to make, towards the 'external' economic, social and environmental costs of development and to mitigate 'the planning loss' it is considered would result from the carrying out of a new development.
- 3.2 What is meant, in this context, by the 'external' costs of development, are all the costs **additional** to those the developer must normally bear to construct the buildings and necessary physical infrastructure on a site to achieve their development objectives and/or those of their customers. The 'normal' costs include costs of works necessary to meet/provide: customer demands; the design and layout requirements of the Council; statutorily required services on-site and the required connections to essential services off-site (for example electricity, highways and drainage), to achieve an economically or financially viable outcome for the developer. The statutory and legal basis for determining what 'external' economic, social and environmental costs developers and/or landowners can be expected to, or be required to bear arising out of a development, in order to make a development acceptable in planning terms, is set out above in Part 2 (Planning Guidance).

3.3 The aim in publishing this SPD is to provide information and advice to landowners, developers and other interested bodies and persons, on the following:

- The basis and justification for seeking developer contributions.
- The types of economic, social and environmental provision that may be the subject of 'developer contributions'.
- The categories of sites where developer contributions will be sought (land use, site size or other relevant characteristics).
- The methodologies or other criteria for assessing and/or calculating the nature and scale of developer contributions.
- The means by which developer contributions will be secured and/or any physical provision will be implemented.

#### **4. Scope of the DCSPD - The types of physical and social provision covered in the SPD**

4.1 The DCSPD could cover a very wide range of topics relating to the provision of physical and social infrastructure.

4.2 However, the Council considers that, during the transition from the 'old' development plan system of local and structure plans, to the 'new' system of Regional Spatial Strategies and Local Development Frameworks, the following, issues and policies most require urgent attention.

- Affordable Housing for local needs
- Recreation Open Space
- Waste and Recycling Facilities
- Education Facilities
- Primary Health Care Facilities
- Community Facilities
- Transport/Highways Infrastructure and Facilities
- Drainage Infrastructure and Facilities
- Local Employment Skills Training
- Enhancement of the Public Realm.

4.3 The Council considers that the subject areas dealt with in this SPD are of critical importance in achieving key strategic objectives set out in the development plan and particularly the 'saved' SDLP. They are also essential in securing the provision of services and facilities that will enable much needed development to go ahead, so that the pace of planned change can be maintained and so that new development is of a high quality and its impacts on the environment and community are, at worst, benign, but if possible are such as to enhance the local area.



- 4.4 Subject areas or issues omitted from this SPD are not left out because they are of less importance in a wider planning policy context. Rather, it is considered that: basic evidence collection or policy development is required, that was not available in time for inclusion in the adopted SPD; or, at present, they have insufficient justification in enabling policy; and/or they can be negotiated straightforwardly under more general policies, in accordance with well established custom and practice.
- 4.5 Whilst this SPD deals with seeking developer contributions for specific subject areas, this will not preclude the Council seeking provision and contributions that may be reasonably required in order for a development to accord with other policies of the SDLP, or to accord with policies and guidance in other development plan documents.
- 4.6 The area that will be covered by the SPD proposals will generally be the whole of Selby District. However, for some proposals the criteria for seeking developer contributions, for example site location and thresholds, will apply only to specified areas within the District.

**5. Developer contributions for specific purposes – justification, land uses, thresholds and methodologies.**

- 5.1 This SPD is intended to provide information and guidance to landowners, developers and other interested bodies and persons, on how the District Council, as the Local Planning Authority for the area, will deal with the issue of developer contributions; details are set out above in Part 2 of the SPD.
- 5.2 The categories of site that are identified as appropriate for seeking developer contributions fall into two main classes. First is the intended land use for which planning permission is to be sought and, second is the size of the site or proposed development.
- 5.3 The land use categories and the sizes of site/development (thresholds) that will be 'eligible' for negotiating developer contributions are not the same for all subject areas.
- 5.4 The subject areas covered in this SPD will be subject to a variety of methodologies for assessing whether contributions will be sought and, if so, what scale of contribution may reasonably be expected of the developer. For some subject areas a methodology is well established and clear, for some a methodology is less well developed and for some there is no established methodology.
- 5.5 A factor that will need to be taken into account in determining, for a particular development, the scale and form of contributions, is the cumulative impact of a number of different contributions considered appropriate in connection with the proposals. This matter is dealt with in more detail in paragraphs 5.11 to 5.16 below.

- 5.6 In Part Two of this SPD, entitled 'Planning Guidance', the subject areas covered by the SPD are dealt with in detail. Guidance and information is set out under each subject heading in a consistent structured form addressed under each heading: Justification; Land Use; Thresholds and Methodology. An introduction to the issues covered under these headings is provided below. In addition, further information is provided on Priorities in seeking contributions as well as the practice of Pooling contributions.

### **Justification**

- 5.7 The justification or basis for seeking contributions in connection with a specific subject area or a particular type of impact of a development is set out at the beginning of the detailed guidance on each subject area at Part 2 of this SPD. The justification for seeking contributions is also detailed in the Sustainability Appraisal of this SPD (published separately).

### **Land Use**

- 5.8 Under this heading, in respect of each subject area the categories of land use that would be created by a planning permission for a proposed development site, which will be eligible for negotiation to secure developer contributions, are specified and/or defined.

### **Thresholds**

- 5.9 The sites considered suitable for developer contributions in respect of land use are categorised in such terms as size, scale and significance. This category is generally referred to as the 'threshold' for starting the developer contribution assessment process. In this part of the detailed guidance, for each of the subject areas, the threshold(s) is (are), specified, defined, described or explained, according to how straightforward and/or clear-cut they are considered to be. Thresholds are, if possible, expressed as a specific minimum figure, for example, '15 dwellings or more', or '0.5 hectares or more', but in some instances they are expressed in more general terms, for example, the significance of the site/development, in terms of the likely impacts on the local environment or community.

### **Methodology**

- 5.10 For each subject area, the methodology to be used in assessing whether eligible sites, in terms of land use and thresholds, should be the subject of negotiations to secure developer contributions (and if so in what form and, if appropriate, on what scale) is set out. The form in which a methodology is expressed depends on factors such as: the nature of the land use; the form of contribution, for example, whether it is to be in

money or in kind; and the scale of the contribution. For some subjects the methodology and some aspects of the contribution, with regard to quantities or proportions, are defined in the source policy.

### **Priorities in seeking contributions**

- 5.11 The possibility of several contributions being sought for different purposes, for an individual site, raises the issue of the *relative importance* of the different contributions that may be sought and thus the *order of priorities* between the contributions for the different of subject areas or mitigating impacts of development.
- 5.12 It is difficult, indeed probably not possible, to prescribe a simple order of priorities that will be applicable in all cases or potential situations. This is because each case will be different, often in several respects, for example, in relation to:
- The needs of the local community for different types of provision.
  - The number, range and scale of provision that could realistically or justifiably sought in planning terms.
  - The characteristics of a particular site or development.
  - What a particular development could support financially.
  - The importance of the development in delivering planning objectives/policies (for example, would the achievement of the five year housing land supply require the urgent release of the site?).
  - Whether a reduction in one or more requirements, in order to achieve a wider range of contributions by subject area, would be better than the development not going ahead in a timely manner, having regard to an overriding need to try and ensure that much needed housing or other development can proceed to meet wider social, economic, or defined planning policy objectives (overlaps the immediately preceding point).
  - Whether the need for one or more items of provision or contribution is/are considered so important, that development should be refused if it/they were not to be forthcoming.
  - Whether the proposed scheme could be altered or scaled-down to avoid or reduce the need for contributions.
- 5.13 Notwithstanding the difficulties in devising general policies and principles concerning priorities, where choices will have to be made, it is possible to state the following:
- In most circumstances provision relating to Affordable Housing for local needs, essential highway/drainage infrastructure and Recreation Open Space objectives will be of a high priority.
  - Education, Health and community facilities, in no particular order, will normally be the next highest priority.
- 5.14 However, for the avoidance of doubt, though this order of priorities will normally be applied, in exceptional cases it may be necessary to vary it.

It will usually be the case that such variation would be negotiated with a developer at an early stage, in the case of large developments before an application is finalised. For large development proposals other stakeholders and the community at large will be involved in such decisions for example, during the preparation of a planning/development brief these will usually be SPDs and subject to wide-ranging consultation.

- 5.15 In cases where developers claim that the scale and/or range of items for which provision and/or contributions are being sought, would be too burdensome, inappropriate, not justified or otherwise unreasonable, the onus will be on the developer to make a convincing case for any reduction in the scale and/or scope of the contributions. In considering the developer's case, the Council will, where appropriate, involve other stakeholders, for example, the local community and service providers, in assessing priorities. Again it is important to note that in the case of large-scale developments a planning/development Brief will be prepared, usually in partnership by the Council and the developer and involving other key stakeholders and that as they will usually be SPDs they will be subject to extensive public participation.
- 5.16 In considering this issue, the Council will take the view that it is for landowners and developers to investigate all the potential infrastructure and planning requirements that could arise in developing a site for the intended use, including off-site costs and reasonable developer contributions **before entering contractual commitments and before making a planning application**. The onus will be on developers and their agents to negotiate reasonable site acquisition costs/option agreements with the landowner in order to offset these requirements. Planning permission will not be granted without meeting these requirements and, consequently, there should be no unreasonable expectations from landowners. It will be assumed by the Council, in order to reinforce this protocol that developers will deal with land acquisition normally through option agreements conditional upon gaining planning permission.

### **Pooling contributions**

- 5.17 Where the combined impact of a number of sites/developments can be shown to create the need for the provision of specified infrastructure works or community facilities, a pooling of contributions can be sought (see Circular 05/2005, paragraphs B21 to B24). This is already happening in Selby District, with the pooling of 'off-site' contributions in respect of Recreation Open Space.
- 5.18 Although no specific proposals for extending the practice of pooling are defined in the SPD, if considered appropriate, the practice may be pursued within the ambit of the general approach set out here. It could apply to particular parts of the District or to some subject areas, or exceptionally for a particular need or project, e.g. an identified

enhancement of the public realm or a recreational /community facility in a particular town or village. If this approach is adopted, then a clear 'audit trail' between the contributions made and the infrastructure or facility provided will be defined.

- 5.19 The Council does not consider that the formal general extension of a 'pooling' approach is justified, without a more detailed consideration of the circumstances in which it would be appropriate and effective. Circular 05/2005 states that a local planning authority's generic policies on payment types, including pooling and maintenance payments, should be contained in Development Plan Documents (DPDs). These matters will be considered in the preparation of the more strategic components of the LDF (i.e. in DPDs) when full account will be taken of emerging Government policy on the proposed 'Planning Gain Supplement'.

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## Appendix 2 The Sustainability Appraisal of the DC SPD

1. In accordance with international and national commitments relating to the achievement of sustainable development objectives, the Planning and Compulsory Purchase Act 2004 (S39) requires a Sustainability Appraisal (SA) to be undertaken for all Local Development Documents.
2. The SA is fully integrated into the SPD preparation process, and is taken account of at each stage when decisions are taken on the content of the SPD. Thereafter, the SA will be used in developing the arrangements for monitoring the physical, economic and social impacts of the proposals in the SPD and for its future review and revision.
3. In addition to an SA, European Legislation ('the SEA Directive') requires a Strategic Environmental Assessment (SEA) of the environmental effects of certain plans and programmes to be undertaken, wherever it is considered that these effects would be 'significant'. The SEA Directive is incorporated into English Statute through the Environmental Assessment of Plans and Programmes Regulations 2004 ("EA Regulations 2004"). An SEA of this SPD has not been carried out. The reasoning for this decision is set out in Section 1 of the SA Report (published separately).
4. The key points are that: firstly, the SPD does not stand alone as a policy document, rather it derives from and amplifies policies higher in the hierarchy of development plan documents, in this case the SDLP (as modified by more recent planning guidance and policies). In itself, therefore, the SPD creates no new policies or proposals. Secondly, the environmental effects that will result from the detailed mechanisms in the SPD, that derive from policies set out elsewhere, are not likely to be 'significant' in the terms set out in the SEA Directive and the enabling Regulations.
5. The SA must be prepared in accordance with a prescribed set of procedures that are detailed in the LD Regulations<sup>1</sup> and PPS12. In summary, these include:
  - The preparation of a **Scoping Report (SR)**, which should be consulted on, during the evidence gathering stage of SPD preparation.
  - The preparation and publishing of a **Sustainability Appraisal of the Draft SPD**.
  - The **consideration of representations** on the SR and the SA together with the SPD.
  - The **amendment of the SA** consequent upon any changes made to the Draft SPD before adoption or resulting from comments on the SA of the Draft SPD itself.
  - The preparation and publishing of **an SA Report of the SPD**.

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<sup>1</sup> Town and Country Planning (Local Development) (England) Regulations 2004.

6. The Sustainability Appraisal Report of this SPD contains information, evidence and justification that summarise the basis on which the SPD guidance and proposals are predicated (Section 3 - The Baseline – Current Circumstances Relevant to Developer Contributions Topics).
7. This information, evidence and justification, is not repeated in this SPD, though elements of it are summarised below. Further details of the policy basis for Affordable Housing for local needs, Recreation Open Space and Waste and Recycling, Education and Primary Health Care Facilities are set out Part 2 of this SPD.
8. The Sustainability Appraisal of the SPD guidance and proposals has been prepared using the Scoping Report as the main framework, but also taking account of the comments and advice of the respondents at all stages of the preparation of the SPD and the most up-to-date policy guidance and other relevant material.
9. In the SA Report the concept of Sustainable Development is defined and the SA and SEA processes explained. The reasons for not carrying out an SEA in parallel with the SA are set out. The purpose of the SA Report and a summary of the appraisal process are then outlined. The next few sections of the SA (Sections 2, 3 and 4) contain information, evidence and justification that underpin the SPD guidance, proposals, criteria, methodologies, etc.. They refer particularly to the current national and development plan policy context, the specific evidence and justification for present and proposed developer contribution criteria, thresholds, etc. and sustainability issues (social, environmental and economic) that can be and are addressed through the implementation of the SPD. The remaining sections of the SA Report contain the ‘framework’ for the appraisal process and the actual appraisal of relevant SDLP policies and the SPD proposals subject by subject.



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## **Appendix 3      Implementing the guidance in the DC SPD.**

1. Planning Conditions and Planning Obligation agreements or undertakings, will be the normal mechanisms for securing adequate and appropriate provision for the economic, social and environmental services, facilities and infrastructure through developer contributions and to ensure that the effects of a development on the environment, the community and existing services and facilities are mitigated.
2. National guidance on the relevant legislation (e.g. sections 70-72 of the Town and Country Planning Act 1990) relating to conditional planning permission is contained in DoE Circular 11/95. ODPM Circular 05/2005 contains the Government's guidance on the use of planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended).
3. Conditions may be imposed on the grant of planning permission for regulating the development of any land under the control of the applicant or for requiring the carrying out of works on such land or for the use of that land. For the purposes of Section 72 of the 1990 Act, "control" does not require that the applicant own the land that is the subject of a condition (this is covered by the concept of "Grampian" conditions").
4. Section 106 Planning Obligations are undertakings or agreements, entered into by developers, unilaterally in the case of undertakings and severally by the Council (as local planning authority) and developers (and, sometimes third parties), in the case of agreements. They are (like conditions) intended to make acceptable development that would otherwise be unacceptable in planning terms. They can be used to prescribe the nature of the development (e.g. through provision of Affordable Housing for local needs); secure a developer contribution to compensate for a loss or damage to the environment or community, created by a development (e.g. loss of open space); or to mitigate the impacts of a development (e.g. through off-site highway improvements or improved public transport facilities).
5. The outcome of using conditions or planning obligations should be that the proposed development would accord with the development plan and other relevant planning guidance and policies. Normally, where a condition can be appropriately attached to a planning permission for new development to ensure that it would be acceptable, this is to be preferred to the use of Section 106 Planning Obligation Agreements/Undertakings.
6. Through this SPD, the Council's policy for the use of Conditions and Planning Obligations to secure provision/contributions of infrastructure, facilities and services by developers, in connection with new development, is amplified and formalised in respect of the subjects it covers.

7. All guidance in this SPD, relating to requirements for developer contributions and all the mechanisms and methodologies designed to govern their implementation, has regard to and will be applied at all times with reference to and in accordance with Circular 11/95 – The Use of Conditions in planning Permissions and/or Circular 05/05 – Planning Obligations.
8. These Circulars are central to the implementation of this SPD, because they form the fundamental policy basis for negotiations between the Council and the developer to secure sustainable and high quality, yet efficient and economically beneficial development, sensitive to its effects on the environment and the needs of the community. Also the Conditions and Obligations that can be attached to a planning permission, by virtue of the legislation that is interpreted in these Circulars, are crucially important to the determination the planning applications for such development, to ensure that it is in accordance with the development plan, having regard for other material considerations and, in particular to secure the mitigation and benefits of the development necessary in order for it to be allowed to take place.
9. Ideally, desirable planning objectives and the requirements of adopted policies will be met with the minimum of controls. However, it will normally be the case, in order to ensure approved schemes are delivered as planned, that planning conditions will need to be attached to permissions by the Council (where appropriate, particularly where more unusual or onerous requirements are involved, with the prior agreement of the developer) and, in some cases, planning obligations (by unilateral undertaking or agreement) will need to be entered into. Where there is a choice between the two, conditions will be preferable.
10. The key point about conditions and obligations, is that they are designed to make acceptable proposals that otherwise would be refused; due to the likely adverse effects such proposals would be likely to have on the environment or community. It is this point that also underpins and justifies the requirements set out in planning guidance, development plan policies and proposals and, specifically the proposals set out in this SPD.
11. In deciding the appropriateness of the basis for applying criteria set out in this SPD and, when applications are being considered in the light of this SPD, for imposing conditions and requiring planning obligations to be entered into, it will be necessary to apply the Secretary of State's 'six tests' of reasonableness detailed in the Circulars cited above. Also, it is clear that in seeking developer contributions in connection with individual developments, these six tests and the relevant case law will be adhered to. The 'six tests' state that a condition or obligation must be:
  - necessary to make the proposed development acceptable in planning terms;
  - relevant to planning;

- relevant to the development to be permitted and fairly and reasonably related in scale and kind to the proposed development;
  - enforceable;
  - precise;
  - reasonable in all other respects.
12. In applying the six tests, it is for the decision maker, sometimes in agreement with the developer, to determine whether the six tests are met, subject only to relevant case law and review by the Courts, concerning the lawfulness of any particular decision. As stated in Circular 05/2005 (paragraph B7), a fundamental principle governing planning obligations and, hence in seeking developer provision or contributions, is that “planning permissions cannot be bought or sold”. Thus, unacceptable development must not be permitted “because of benefits or inducements offered by a developer, which are not necessary to make the development acceptable in planning terms.” Further (paragraph B8), “... planning obligations should never be used purely as a means of securing for the local community a share in the profits of development.”
13. It should be borne in mind that the Government is currently reviewing the concept of a general ‘Planning Contribution’. The legislative basis for Planning Contributions is set out in Sections 46 and 47 of the P&CP Act 2004. Since then, the Government has issued a document entitled – ‘Planning-gain Supplement – a consultation’ (December 2005). In this document it is proposed that the Planning-gain Supplement (PGS) would operate alongside a ‘scaled-back’ planning obligation system’. However, if the PGS is introduced it will not come into effect nationally before 2008. It is stated in the document that the Government will encourage LPAs to implement the use of formulaic and standard charge approaches to planning obligations. Already some authorities are proposing to adopt ‘tariff’ based schemes (Milton Keynes for example); though where they are doing so, this is being done through the formal LDF route. Thus, it is quite likely that such an approach will be considered during the preparation of relevant documents in the LDF for Selby District. The District Council is clear that it would not be appropriate to adopt such a system other than through the full DPD process.

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